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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/646,333	08/22/2003	James H. Brauker	DEXCOM.011A	8284

20995 7590 08/13/2004

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EXAMINER
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KREMER, MATTHEW J

ART UNIT	PAPER NUMBER
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3736

DATE MAILED: 08/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/646,333	BRAUKER ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Matthew J Kremer	3736	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-76 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-76 are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

## DETAILED ACTION

### ***Election/Restrictions***

1. This application contains claims directed to the following patentably distinct species of the claimed invention:

First Subset of Species: Type of sensor

- A. the sensor is a subcutaneous sensor (claim 2)
- B. the sensor is an intramuscular sensor (claim 3)
- C. the sensor is an intraperitoneal sensor (claim 4)
- D. the sensor is an intrafascial sensor (claim 5)

Second Subset of Species: Implantation of sensor

- E. the sensor is suitable for implantation in an auxiliary region (claim 6)
- F. the sensor is suitable for implantation in a soft tissue of a body (claim 7)
- G. the sensor is suitable for implantation at the interface between two tissue types (claim 8)

Third Subset of Species: Second major surface

- H. the second surface is flat (claim 11)
- I. the second major surface comprises a curvature (claim 12)

Fourth Subset of Species: Position of first major surface

- J. the sensor region is situated at a position on said first major surface offset from a center point of said first major surface (claim 13)
- K. the sensor region is situated on said first major surface approximately at a center point of said first major surface (claim 14)
- L. the sensor region is situated approximately at an apex of said first surface (claim 15)

Fifth Subset of Species: Shape

- M. a substantially rectangular profile (claim 16)
- N. a substantially rectangular profile with rounded corners (claim 17)
- O. a substantially oval profile (claim 18)
- P. a substantially circular profile (claim 19)
- Q. substantially cuboidal defined by six faces, eight vertices, and twelve edges (claims 20-26)
- R. substantially cylindrical defined by a curved lateral surface and two ends and wherein the sensor region is located on said lateral surface (claim 27)
- S. substantially cylindrical defined by a curved lateral surface and two

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ends, and wherein at least one of said ends comprises the substantially curved portion on which the sensor region is located (claim 28)

T. substantially spherical (claim 29)

U. substantially ellipsoidal (claim 30)

Sixth Subset of Species: Body Material

a. material is selected from the group consisting of thermoplastic and thermoset (claim 61, 62, 73)

b. material is selected from the group consisting of metal, ceramic, and glass (claim 66)

Seventh Subset of Species: If (a) is selected from subset 6, then one of the following must be selected:

g. thermoset is epoxy (claim 63)

h. thermoset is silicone (claim 64)

i. thermoset is polyurethane (claim 65)

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species from each of the above subsets for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1, 9, 10, 31-61, 67-69, 71-72, and 74-76 are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

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Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

2. A telephone call was made to attorney of record on 8/9/2004 to request an oral election to the above restriction requirement, but did not result in an election being made.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

3. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew J Kremer whose telephone number

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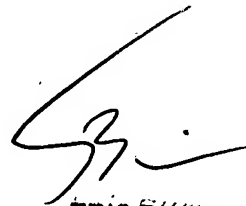
is 703-605-0421. The examiner can normally be reached on Mon. through Fri. between 8:30 a.m. - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on 703-308-3130. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Matthew Kremer  
Assistant Examiner  
Art Unit 3736



ERIC F. WINAKUR  
PRIMARY EXAMINER